

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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IN RE JERRY CHRIS FLOWERS,  
Debtor.

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BAP No.    WO-11-093

JERRY CHRIS FLOWERS,  
Appellant,  
  
v.  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, formerly known  
as Bankers Trust Company of  
California, N.A.,  
Appellee.

Bankr. No. 11-12096  
Chapter 13

DISMISSAL ORDER  
November 19, 2013

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Before THURMAN, KARLIN, and SOMERS, Bankruptcy Judges.

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The matter before the Court is Appellee Deutsche Bank National Trust Company's Motion to Dismiss Appeal, filed October 28, 2013 (the "Motion to Dismiss"). On November 4, 2013, the Appellant Jerry Chris Flowers filed a Response, and on November 11, 2013, Appellee filed its Reply Brief in Support of the Motion to Dismiss.

This appeal was filed September 26, 2011, from the bankruptcy court's September 12, 2011, order granting Appellee's motion for relief from stay and for abandonment of the subject property, which was entered over Appellant's objection that Appellee lacked standing to prosecute, due to the preclusive nature of a related prior state court judgment.(the "Appealed Order"). On January 13, 2012, Appellant filed his opening brief in this appeal. On May 31, 2012, we granted Appellee's motion to stay this appeal pending the resolution of

Appellant's petition to vacate the state court's underlying judgment of foreclosure. On May 24, 2012, the state court granted Appellant's motion to vacate, and on June 25, 2012, we issued an Order to Show Cause Why Appeal Should Not Be Dismissed as Moot. In response, Appellant advised that this appeal was not moot because the question of whether Appellee possessed standing to seek stay relief had not yet been resolved. Appellee advised that it had filed a motion with the bankruptcy court to vacate the Appealed Order based on the state court's vacation of the prior judgment of foreclosure.

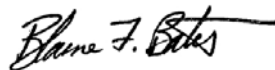
On July 23, 2012, we entered an Order requiring Appellee to either serve and file its responsive brief or a motion to dismiss this appeal as moot within fourteen days of entry of the bankruptcy court's order disposing of its motion to vacate the Appealed Order. The Motion to Dismiss advises that the bankruptcy court vacated the Appealed Order on October 16, 2013, and that this appeal should now be dismissed as moot. Appellant's Response agrees that the Appealed Order has been vacated, and does not oppose dismissal. Response at 2.<sup>1</sup>

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<sup>1</sup> Appellant further "requests that this appeal be dismissed and that he be deemed the prevailing party for purposes of recovering attorney fees and costs associated with defending Appellee's Motion to Lift Stay and the filing and prosecution this appeal." Response at 2. To the extent reimbursement of his attorney fees are sought, Appellant provides no basis in law or fact that would support such a request. And, any request for costs under Fed. R. Bankr. P. 8014 must be presented to the bankruptcy court to be taxed against a losing party. *See* Fed. R. Bankr. P. 8014 Advisory Committee Note ("Under this rule all costs are taxed by the clerk of the bankruptcy court."). In any event however, where an appeal is dismissed as moot, there is no prevailing party. Parties "prevail" when they obtain enforceable judgments on the merits or court-ordered consent decrees. *Biodiversity Conservation Alliance v. Stem*, 519 F.3d 1226, 1229 (10th Cir. 2008) (citing *Buckhannon Board & Care Home, Inc. v. W. Va. Dept. of Health and Human Res.*, 532 U.S. 598, 604 (2001)). Appellant's request in this regard is denied.

Accordingly it is HEREBY ORDERED that the Motion to Dismiss is GRANTED and the MANDATE shall enter FORTHWITH.

For the Panel:

A handwritten signature in black ink, reading "Blaine F. Bates". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Blaine F. Bates  
Clerk of Court